

Rye City Planning Commission Minutes
June 28, 2005

MEETING ATTENDANCE:

Planning Commission Members:

- Barbara Cummings, Chair
- Martha Monserrate, Vice-Chair
- Nick Everett
- Hugh Greechan
- Peter Larr
- H. Gerry Seitz
-

Other:

- Christian K. Miller, AICP, City Planner
 - George Mottarella, P.E., City Engineer
 - Chantal Detlefs, City Naturalist
 - Joe Murphy, CC/AC Chair
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I. HEARINGS

1. 3 Martin Road

- Linda Whitehead (applicant's attorney) stated that as requested by the Commission the applicant videoed existing City drain lines at the end of Martin Road. Ms. Whitehead stated that copies of the tapes were provided to the City, which show the drain lines to be clear and functioning properly.
- Ms. Whitehead stated that as requested by the Commission a plan was provided showing the extent of tree canopy of those trees on the site in excess of 36 inches in diameter. Ms. Whitehead stated that the plan shows that entirety of each of the proposed building envelopes for Lots 1 and 2 are covered by tree canopy and that even a reduction in the size of the proposed residences could not avoid impacts to these trees. Ms. Whitehead added that the applicant's plans propose to preserve five oak trees over 30 inches in diameter.
- As requested by the Commission, Ms. Whitehead stated that the applicant's revised submission includes information on the available vehicle sight distance for the proposed driveway for Lot 2. She stated that the sight was acceptable.
- Ms. Whitehead stated that a letter was provided to the Commission from Con Ed indicating that electrical service would be provided to the site for each of the proposed residences.
- Scott Barringer (5 Martin Road) requested further elaboration on the percolation tests conducted by the applicant including where the tests were conducted on the site and number of holes excavated. He stated that he witnessed one hole on the property, which appears to be in a location that is different from where the proposed sub-surface drainage measures are to be located.

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- 1 • Mr. Barringer stated that two of the proposed trees to be removed by the
2 applicant are within the Martin Road right-of-way, which is City property. He also
3 noted that the applicant was requested by the Commission to modify its plans to
4 reduce the extent of tree removal, which does not appear to have occurred. He
5 also questioned how many trees would be removed if only one house were
6 constructed on the property.
7
- 8 • Mr. Barringer complained of recent construction activities on the property at
9 inappropriate hours of the day. One early morning incident resulted in a police
10 response. He also stated that the public notification sign was mounted on a
11 public tree, which is a violation of law.
12
- 13 • Michael Leman (3 Heritage Lane) stated that he was involved in both incidents at
14 the property noting that the applicant had representatives at the property at 11:30
15 P.M. drinking beer. Mr. Leman stated that he confronted the individual who
16 agreed to leave the property. Mr. Leman stated that the applicant has been
17 involved in a number of lawsuits and that the Commission's 2001 minutes
18 indicate that the Commission requested that the applicant's contractors licensed
19 be revoked. Mr. Leman stated concerns with the applicant's prior history of not
20 following the law and complying with approved plans, particularly where blasting,
21 tree removal and other site work is involved. He requested that the Commission
22 require a substantial performance bond for all site work.
23
- 24 • Ms. Whitehead responded that Mr. Leman should be careful with his allegations.
25 She stated that she has represented the applicant for ten years and that there
26 has been only one lawsuit that she is aware of and that case was settled. Ms.
27 Whitehead added that a refuse container was delivered in the early morning,
28 which was done against the instructions of the applicant. The evening incident
29 involved an employee of the applicant who was installing construction fencing
30 because he had forgotten to do so earlier in the day. Ms. Whitehead stated that
31 the applicant is the property owner and does have rights to be on the property.
32
- 33 • The Commission questioned whether Ms. Whitehead could provide more
34 information on the number of lawsuits against the applicant. Ms. Whitehead
35 responded that Mr. Leman should provide that evidence since he is the one
36 making the accusations. Ms. Whitehead added that the information is irrelevant
37 since the application should be based on it's own merits and not the prior
38 activities of the applicant.
39
- 40 • Chuck Utschig (Applicant's Engineer) stated that the percolation hole tests were
41 conducted within the general vicinity of the proposed location of the sub-surface
42 drainage measures. Mr. Utschig stated that the holes are only 6-8 inches in
43 diameter and covered over after testing. The City Planner added that the current
44 hole on the property was not the result of a percolation test but related to the
45 disconnection of utilities and/or septic system.

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- The Commission stated that it continued to be concerned regarding the capacity of the existing City piping at the end of Martin Road, particularly in light of the applicant's findings that the existing pipe was not blocked. The Commission questioned whether the existing pipe was undersized based on the testimony of neighbors that the catch basin at the end of Martin Road routinely floods. The Commission stated that it would like to keep the hearing open to review this question further.
- Ms. Whitehead stated that the Commission had no basis for keeping the hearing open since the applicant's plan did not contribute to existing flooding problems. Mr. Utschig stated that the applicant's plans will detain on-site stormwater runoff associated with a 100-year storm event, where only a 25-year storm event is required to be retained by the City Code. Mr. Utschig stated that there is over 7,000 square feet of impervious area on the property today that is not captured by any on-site drainage system. He stated that the proposed plans would add only 2,000 square feet of impervious area, which would be captured and directed towards a new drainage system. Mr. Utschig stated that even if the existing piping at the end of Martin Road were undersized, that the applicant's plan does not add stormwater to the system.
- The Commission requested whether the applicant's drainage analysis considered the impact of the loss of trees, including the reduced groundwater uptake of trees. Mr. Utschig stated that it did since the proposed condition reflected a different curve value for a property with no trees. Mr. Utschig stated that groundwater impacts associated with the loss of trees was not included in the analysis, but added that there was no engineering basis for groundwater uptake associated with trees.
- The Commission disagreed noting that the groundwater uptake concerns were significant since it could result in off-site impacts on neighboring properties. The Commission also noted that the applicant did not provide a watershed analysis to verify the adequacy of the pipe size at the end of Martin Road.
- The Commission agreed that in light of the outstanding concerns the public hearing should be kept open. Ms. Whitehead objected noting that the hearing requirements have been satisfied since the public has been given ample opportunity to express their concerns.

ACTION: Martha Monserrate made a motion, seconded by Gerry Seitz, that the Planning Commission keep open the public hearing on final subdivision application number SUB294, which was carried by the following vote:

Barbara Cummings, Chair:	Aye
Martha Monserrate, Vice- Chair:	Aye

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1	Nick Everett:	Nay
2	Hugh Greechan	Aye
3	Peter Larr:	Aye
4	H. Gerry Seitz:	Aye

2. Mazzola Residence

- Alan Pilch (Applicant's environmental consultant) stated that the application involves the construction of an addition to a residence located within a 100-foot wetland buffer. The property is zoned R-3 District and the lot size is approximately 11,800 square feet.
- Mr. Pilch stated that the wetland delineation was conducted in April 2005. The wetland is located in the rear corner of the property and consists of poorly drained hydric lawn.
- Mr. Pilch stated that the proposed addition consists of a 12-foot by 20-foot garage with a flat roof and a deck on top. Total development on the property would be approximately 2,700 square feet for a floor area ratio of 0.23.
- Mr. Pilch stated that approximately 970 square feet of impervious area exists in the buffer. Much of the proposed addition would be over existing asphalt area and would add approximately 200 square feet of impervious area, or an increase of 21 percent.
- The increase in stormwater runoff would be directed toward a rain garden located adjacent to the wetland area. The rain garden was sized to accommodate the increase in runoff associated with a 25-year storm event. Approximately 1,450 square feet of wetland plantings would be included in the rain garden for a total mitigation ratio (plantings to increased impervious area) of 7:1.
- There was no public comment.

ACTION: Peter Larr made a motion, seconded by Gerry Seitz, that the Planning Commission close the public hearing on wetland permit application number WP173, which was carried by the following vote:

38	Barbara Cummings, Chair:	Aye
39	Martha Monserrate, Vice- Chair:	Aye
40	Nick Everett:	Aye
41	Hugh Greechan	Aye
42	Peter Larr:	Aye
43	H. Gerry Seitz:	Aye

1 **3. Zingaro & Luffman Residence**

- 2
- 3 • Joseph Lavigna (applicant's engineer) stated that the applicant is seeking a
4 wetland permit to maintain a deck located within a 100-foot wetland buffer. The
5 deck was constructed five or six years ago.
6
 - 7 • Mr. Lavigna stated that the driveway was recently paved, but likely was not
8 expanded since there is evidence from a prior survey of a garage located in the
9 rear of the property. The garage was removed many years ago. Mr. Lavigna
10 stated that the deck has no adverse impact on the wetland.
11
 - 12 • The Commission requested that the copy of the survey of the property be
13 included in the application file and official record.
14
 - 15 • There was no public comment.
16

17 **ACTION:** Martha Monserrate made a motion, seconded by Peter Larr, that the
18 Planning Commission close the public hearing on wetland permit
19 application number WP174, which was carried by the following vote:
20

21	Barbara Cummings, Chair:	Aye
22	Martha Monserrate, Vice- Chair:	Aye
23	Nick Everett:	Aye
24	Hugh Greechan	Aye
25	Peter Larr:	Aye
26	H. Gerry Seitz:	Aye

27

28

29 **II. ITEMS PENDING ACTION**

30

31 **1. 3 Martin Road**

- 32
- 33 • The Commission questioned the applicant's sight distance analysis for Lot 2. Mr.
34 Utschig stated that the sight distance was measured according to accepted
35 criteria. He stated that at the driveway sight distance looking to the left was 180
36 feet, which coincides with the end of the cul-de-sac on Martin Road. To the right
37 approximately 136 feet of sight distance is available, which meets the criteria for a
38 travel speed of between 20-30 m.p.h. He stated that sight distance of 200 feet
39 could be achieved if there was the removal of a tree within the right-of-way, which
40 meets the criteria for a travel speed of 30 m.p.h. If the existing hedgerow along
41 the property's frontage were removed there would be 150 feet of sight distance to
42 the right, which meets the criteria for a travel speed of 25 m.p.h.
43

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- 1 • The Commission agreed that the hedgerow should be removed and that 150 feet
2 of sight distance appeared acceptable given the generally slow speeds in the
3 neighborhood and the minimal amount of traffic on the cul-de-sac road. Mr.
4 Utschig added that the intersection of Martin and Heritage Roads would be visible
5 from the proposed driveway on Lot 2.
6
- 7 • The Commission questioned the size of the existing pipe at the end of Martin
8 Road and whether the drainage system in the area is over capacity. Mr. Utschig
9 stated that the 10-inch pipe at the end of Martin Road handles all of the runoff
10 from a developed 5-acre watershed. He noted that the pipe appears to be
11 significantly undersized. Drainage problems in the area could be improved based
12 on existing elevations of the catch basin at the end of Martin Road and the outfall
13 if the pipe size were increased to 24 inches. Mr. Utschig stated that the applicant
14 is not contributing to this problem since the drainage design detains the increase
15 in stormwater runoff associated with the proposed development for a 100-year
16 storm event. The City Code requires on-site detention for only a 25-year event.
17
- 18 • Mr. Utschig stated even though the development does not contribute to the
19 existing problem, that the applicant is willing to contribute \$15,000 towards the
20 upgrading of the undersized pipe at the end of Martin Road. The cost is based on
21 the installation of 300 linear feet of 24-inch pipe. Mr. Utschig stated that the exact
22 design of the system should be left to the City Engineer. Depending on the final
23 design the system could address the flooding problems on Mr. Barringer's
24 property. Mr. Utschig noted that the applicant videoed the drain line extending
25 from Mr. Barringer's property and that it appeared to be clogged.
26
- 27 • The Commission questioned the use of the proposed sub-surface cultech
28 drainage units and the extent of maintenance involved to keep the operating
29 properly. Mr. Utschig stated that the units should be inspected annually to check
30 for the accumulation of sand. The units can be cleaned with a vacuum truck.
31 Maintenance of the units is the property owner's responsibility. Ms. Whitehead
32 suggested that a covenant and restriction could be placed on the property as part
33 of the subdivision approval requiring the future property owners to maintain the
34 on-site drainage measures. The City Planner emphasized that the City should not
35 be responsible for the maintenance.
36
- 37 • The Commission discussed reducing the number of cultech units to provide only a
38 water quality (i.e. "first flush") treatment. This measure seemed appropriate to
39 reduce potential groundwater recharge on adjacent properties and given the fact
40 that a new drain line would be extended from the property to the end of Martin
41 Road, thereby addressing potential stormwater quantity impacts. Mr. Utschig
42 stated that given the location of the site within the watershed, that requiring less
43 on-site storage would be reasonable since it would avoid the potential for water
44 released from the site coinciding with upstream stormwater. He suggested that

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1 getting water away from the property as quickly as possible would be the
2 preferred strategy from a water quantity perspective.
3

- 4 • The Commission stressed the need to revise the plan to preserve more of the
5 existing trees on the property. The Commission specifically noted that tree
6 numbers 30, 31 and 32 could be saved with changes in the house and grading
7 designs. The Commission noted that additional trees noted on the plan to be
8 preserved would likely be adversely impacted and eventually require removal
9 including tree numbers 30, 31, 12, 14, 24, 25 and 23. The Commission requested
10 that the improvement plans be revised to provide greater protection to these trees.
11 Appropriate tree protection measures should also be added to the plan.
12
- 13 • Mr. Utschig stated that he disagreed with the Commission's assessment of
14 impacts to existing trees, but that the applicant would review further modifications
15 to its design. Ms. Whitehead stated that the applicant is preserving a number of
16 trees on the property and has already revised its plans once to reduce tree loss.
17 She stated that it is not the intent of the tree preservation provisions of the City
18 Code to save every tree on a property since that would not permit any
19 development.
20
- 21 • The Commission reviewed the letter from Con Ed regarding the availability of
22 utility service in the area. The Commission questioned whether given the
23 sporadic electrical service noted in the public hearing it would be appropriate to
24 prohibit the use of sewer ejector pumps. It was noted, however, that the applicant
25 proposes gravity sewer service and that to deny the use of ejector pumps would
26 prevent others in the neighborhood from using the new sewer line installed by the
27 application. In addition, ejector pumps require a back-up tank in the event of a
28 power failure.
29
- 30 • The Commission discussed the impact of the development on groundwater and
31 the impact of the loss of trees (which soak up groundwater) would have on area
32 properties.
33
- 34 • A neighbor noted that replacing the drain line at the end of Martin Road might
35 result in the removal of an existing elm tree located within the right-of-way.
36

37 2. Mazzola Residence

- 38 • The Commission found the revised plan acceptable, but requested that the
39 resolution be revised to require the applicant to provide a detail of the proposed
40 marker delineating the edge of the wetland mitigation area.
41

42
43 **ACTION:** Nick Everett made a motion, seconded by Gerry Seitz, that the Planning
44 Commission conditionally approve wetland permit application number WP
45 173, which was carried by the following vote:

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1
2 Barbara Cummings, Chair: Aye
3 Martha Monserrate, Vice- Chair: Aye
4 Nick Everett: Aye
5 Hugh Greechan Aye
6 Peter Larr: Aye
7 H. Gerry Seitz: Aye
8

9 3. Zingaro & Luffman Residence

- 10
11 • The Commission found the plan and wetland application acceptable.
12

13 **ACTION:** Martha Monserrate made a motion, seconded by Peter Larr, that the
14 Planning Commission conditionally approve wetland permit application
15 number WP174, which was carried by the following vote:
16

17 Barbara Cummings, Chair: Aye
18 Martha Monserrate, Vice- Chair: Aye
19 Nick Everett: Aye
20 Hugh Greechan Aye
21 Peter Larr: Aye
22 H. Gerry Seitz: Aye
23

24 4. Hartman Subdivision

- 25
26 • The Commission noted that it had received an opinion from Corporation Counsel,
27 which stated that the applicant's proposed subdivision did not meet the minimum
28 frontage requirement of the City Zoning Code. The Commission noted that the
29 City Zoning Code has additional standards as to what constitutes adequate
30 frontage beyond that required by General City Law.
31
32 • Jonathan Kraut (applicant's attorney) stated that he was generally aware of
33 Corporation Counsel's opinion since he had been in contact with his office
34 regarding the matter, but requested a copy of the opinion for his review. The
35 Commission noted that it would not release the opinion until advised by and
36 consented to by the Corporation Counsel. Mr. Kraut stated that he wanted to
37 know whether the opinion relied on any cases, particularly those cited in Mr.
38 Kraut's memorandum to the Commission regarding the frontage matter.
39
40 • Mr. Kraut stated that he would seek an official determination from the City
41 Building Inspector regarding the proposed subdivision so that he could seek a
42 variance. He also stated that he would revise the subdivision plan for the
43 Commission's review to show a roadway/access within the Summit Avenue right-
44 of-way that complies with Corporation Counsel's opinion.
45

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5. Rock Ridge

- The Commission requested that the applicant provide prior subdivision/apportionment and variance approvals for its review. The Commission also requested that mapping be provided to better clarify existing property lines and existing and proposed zoning.
- Jonathan Kraut (applicant's attorney) stated that the applicant is seeking to modify the lot lines to better correspond to existing topography. The City Planner added that the applicant or the City might choose to modify the zoning to correspond to the proposed property lines. Generally, the zoning boundary separating the Business from the residential zone would follow the top of an existing slope on the two properties.
- The Commission agreed that it would conduct a site walk before taking further action.

6. 8-10 School Street

- Jonathan Kraut (applicant's attorney) stated that he represented Gary and Diane Hirsh, property owners of 8-10 School Street and Rye residents.
- Mr. Kraut provided an overview of the surrounding area and land uses and presented a zoning-code compliant plan for the property. The plan included four parking spaces along the property's frontage, 1,500 square feet of office space on the first floor and a total of four apartments on the second and third floors. Total building height (measured to the mid-point between the eaves) would be 38 feet. Mr. Kraut stated that the code-compliant design would not allow for any additional parking on the site and that the commercial use would generate more parking and traffic to the area. He also stated that commercial use on the first floor would make the second and third floor apartments less desirable to tenants.
- Mr. Kraut presented the applicant's proposed plan including a first floor consisting of a lobby and eight parking spaces. Two apartments would be provided on the second, third and fourth floors for a total of six apartments in the building. No commercial space would be provided and the proposed units would be high-quality housing. The total building height would be 38 feet, the same as the code-compliant plan. Mr. Kraut stated that the proposed plan requires a variance for the fourth story, since only three are permitted in the B-2 Central Business District. He added that the reason the additional story is needed is that the first floor parking is counted as a story.
- Mr. Kraut stated that the story variance would be appropriate given height of the adjacent (former school) building and that the overall height would be below the

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1 40 feet permitted by the B-2 District. He stated that the massing and design
2 would be the same as a code-compliant plan.
3

- 4 • The Commission disagreed with Mr. Kraut's assessment, noting that the
5 additional story would increase the massing of the building from the sides, which
6 would be particularly visible. The Commission requested that the applicant
7 provide elevations of the sides of the building as compared to the code-compliant
8 scenario.
9
- 10 • The City Planner stated that the sides of the building are important to consider
11 because the NYS Building Code will require fire-rated walls on the sides of the
12 building, which will not permit any windows. In addition, the narrow width of the
13 lot will not allow for other architectural treatments to minimize the visual impact of
14 the blank sidewalls. The City Planner also stated that the inclusion of a small
15 commercial space on the first floor was not objectionable since the property is
16 located in the City's B-2 District, which encourage mixed-use buildings.
17
- 18 • The Commission agreed that it would not take any further action until it
19 conducted a site walk of the property.
20

21 7. 11 Glendale Avenue

- 22
- 23 • Heidi Fortin (applicant) was present at the meeting.
24

25 **ACTION:** Peter Larr made a motion, seconded by Nick Everett, that the Planning
26 Commission set a public hearing for its next meeting on amended wetland
27 permit application number WP175, which was carried by the following
28 vote:
29

30 Barbara Cummings, Chair:	Aye
31 Martha Monserrate, Vice- Chair:	Aye
32 Nick Everett:	Aye
33 Hugh Greechan	Aye
34 Peter Larr:	Aye
35 H. Gerry Seitz:	Aye
36	
37	
38	

39 8. AYC Proposed Zoning District Change and Text Amendment

- 40
- 41 • The Commission stated that it had reviewed the applicant's proposed text
42 amendment and its prior memoranda regarding the proposed zoning change.
43 The Commission agreed that the proposed change appeared acceptable, but
44 added that the Shenerock Shore Club should be included in the proposed zoning
45 change subject to their notification. The Commission agreed that all of the clubs

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1 in the MC District should be notified since the proposed text amendment will also
2 impact the Manursing Island and Westchester Clubs. The Commission noted
3 that these properties and Shenerock own property that is separated by a private
4 or public road.

- 5
- 6 • Jonathan Kraut (applicant's attorney) stated that the club has no immediate
7 intention to pursue any changes to its property, but that it would likely pursue an
8 expansion of its docks at some point in the future. The Commission agreed that
9 docks are consistent with the club uses in the area and the policies of the City's
10 LWRP, which encourages preserving and enhancing water dependant uses. The
11 City Planner noted that the text amendment would not necessarily address other
12 zoning code dimensional deficiencies of a club property since a 100-foot property
13 line setback would still be required.
 - 14
 - 15 • The Commission requested that the City Planner prepare a draft memorandum to
16 the City Council for its consideration at its July 19 meeting.
 - 17

18 **9. Discussion of Long-Range Planning in the City of Rye**

- 19
- 20 • The Commission discussed the need for updating the City Master Plan. The
21 Commission stated that such a task is a very lengthy process that can be a
22 political concern for elected officials. The Commission stated that an update
23 process was initiated five or six years ago and never completed. As an
24 alternative the Commission has been working with the City Planner on a variety
25 specific planning issues. For instance, the Neighborhood Business District
26 Committee was established to address concerns in the B-1 District. Similar
27 planning efforts are underway for the Central Business District and planning
28 issues in residential districts such as 2-lot subdivisions and accessory structures.
 - 29

30 **10. Minutes**

- 31
- 32 • The Planning Commission approved with minor revisions minutes of its June 14
33 and May 24 meetings.
 - 34